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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

12 JULIA MEAUNRIT, as an individual, and on
13 behalf of all others similarly situated,

CASE NO. C 10-05153 JSW

**DEFENDANT'S ANSWER TO FIRST
AMENDED COMPLAINT**

DEMAND FOR JURY TRIAL

14 Plaintiff,

15 v.

16 SNAPPLE BEVERAGE CORP.,
17 a Delaware corporation,

18 Defendant.

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RESPONSE TO ALLEGATIONS IN THE FIRST AMENDED COMPLAINT

4 1. In response to paragraph 1 of the First Amended Complaint, Defendant
5 states that the allegations therein state legal conclusions to which no response is required and, on
6 that basis, Defendant denies them. However, at present, Defendant does not challenge that this
7 Court possesses subject matter jurisdiction over this dispute.

8 2. In response to paragraph 2 of the First Amended Complaint, Defendant is
9 presently without sufficient knowledge or information to form a belief as to the truth of the
10 allegation that the matter in controversy exceeds in the aggregate the sum of \$5,000,000, exclusive
11 of interests and costs, and on that basis denies the allegation. In addition, Defendant states that the
12 allegations contained in paragraph 2 state legal conclusions to which no response is required.
13 Defendant otherwise denies each and every allegation contained in paragraph 2.

14 3. In response to paragraph 3 of the First Amended Complaint, Defendant
15 admits that it is a citizen of the State of Delaware, but denies that it is a citizen of the State of New
16 York. Defendant is presently without sufficient knowledge or information to form a belief as to
17 the truth of the allegation that Plaintiff is a citizen of California, and on that basis denies the
18 allegation. The allegation that diversity of citizenship exists states a legal conclusion to which no
19 response is required.

20 4. In response to paragraph 4 of the First Amended Complaint, Defendant
21 does not challenge that this Court possesses subject matter jurisdiction over this dispute.
22 However, Defendant otherwise denies each and every allegation contained in paragraph 4.

23 5. In response to paragraph 5 of the First Amended Complaint, Defendant
24 admits that its products may be purchased by consumers in the Central District of California. The
25 allegation that venue is proper states a legal conclusion to which no response is required.
26 However, Defendant does not challenge that venue is proper in this district, and does not challenge
27 that it is subject to personal jurisdiction in this district. Defendant otherwise denies each and
28 every allegation contained in paragraph 5.

1 6. In response to paragraph 6 of the First Amended Complaint, Defendant
2 states that it is presently without sufficient knowledge or information to form a belief as to the
3 truth of the allegations therein and, on that basis, denies them. In addition, Defendant specifically
4 denies the allegations that: “the labeling and advertising for the Product was and is false and/or
5 misleading”; the “labeling and advertising for the Product... contain[ed] ... misrepresentations”;
6 and “[t]he labeling and advertising for the Product was designed to encourage consumers to
7 purchase the Product.”

8 7. In response to paragraph 7 of the First Amended Complaint, Defendant
9 admits that it is a Delaware corporation. The allegation as to this Court’s diversity jurisdiction
10 states a legal conclusion to which no response is required. Defendant otherwise denies each and
11 every allegation contained in paragraph 7.

12 8. In response to paragraph 8 of the First Amended Complaint, Defendant
13 denies each and every allegation contained therein.

14 9. In response to paragraph 9 of the First Amended Complaint, Defendant
15 denies each and every allegation contained therein.

16 10. In response to paragraph 10 of the First Amended Complaint, Defendant
17 denies each and every allegation contained therein.

18 11. In response to paragraph 11 of the First Amended Complaint, Defendant
19 denies each and every allegation contained therein.

20 12. In response to paragraph 12 of the First Amended Complaint, Defendant
21 denies each and every allegation contained therein.

22 13. In response to paragraph 13 of the First Amended Complaint, Defendant
23 denies each and every allegation contained therein.

24 14. In response to paragraph 14 of the First Amended Complaint, Defendant
25 admits that the word “Immunity” appeared on the front label of the Product. Defendant also
26 admits that a Snapple website page relating to the Product stated: “In our search for the perfect
27 tea, we scoured the planet and found rooibos (“roy-boss”), a rare antioxidant rich tea** that only
28 grows in the Western Cape region of South Africa.... We topped it off with real fruit juice and

1 Vitamin C to help support a healthy immune system*. So go ahead, enjoy our delicious rooibos.
2 And work on the pronunciation later.” Defendant further admits that such website page stated:
3 “*It’s rich in antioxidant vitamin C which helps support a healthy immune system.” Defendant
4 further admits that such website page stated: “**Contains about 36mg of polyphenols per 8 fl oz.”
5 Defendant otherwise denies each and every allegation contained in paragraph 14.

6 15. In response to paragraph 15 of the First Amended Complaint, Defendant
7 denies each and every allegation contained therein.

8 16. In response to paragraph 16 of the First Amended Complaint, Defendant
9 denies each and every allegation contained therein.

10 17. In response to paragraph 17 of the First Amended Complaint, Defendant
11 denies each and every allegation contained therein.

12 18. In response to paragraph 18 of the First Amended Complaint, Defendant
13 denies each and every allegation contained therein.

14 19. In response to paragraph 19 of the First Amended Complaint, Defendant
15 denies each and every allegation contained therein.

16 20. In response to paragraph 20 of the First Amended Complaint, Defendant is
17 presently without sufficient knowledge or information to form a belief as to the truth of the
18 allegation concerning Plaintiff’s intent when she allegedly purchased the Product, and on that
19 basis denies the allegation. Defendant otherwise denies each and every allegation contained in
20 paragraph 20.

21 21. In response to paragraph 21 of the First Amended Complaint, Defendant
22 states that the allegations contained therein are vague. Otherwise, Defendant is presently without
23 sufficient knowledge or information to form a belief as to the truth of the allegations contained in
24 paragraph 21, and on that basis denies them.

25 22. In response to paragraph 22 of the First Amended Complaint, Defendant
26 states that the allegations contained therein are vague. Otherwise, Defendant is presently without
27 sufficient knowledge or information to form a belief as to the truth of the allegations contained in
28 paragraph 22, and on that basis denies them.

1 23. In response to paragraph 23 of the First Amended Complaint, Defendant
 2 states that the allegations contained therein are vague. Otherwise, Defendant is presently without
 3 sufficient knowledge or information to form a belief as to the truth of the allegations contained in
 4 paragraph 23, and on that basis denies them.

5 24. In response to paragraph 24 of the First Amended Complaint, Defendant
 6 states that the allegations contained therein are vague. Otherwise, Defendant is presently without
 7 sufficient knowledge or information to form a belief as to the truth of the allegations contained in
 8 paragraph 24, and on that basis denies them.

9 25. In response to paragraph 25 of the First Amended Complaint, Defendant
 10 denies each and every allegation contained therein.

11 26. In response to paragraph 26 of the First Amended Complaint, Defendant
 12 admits that the word “Immunity” appeared on the front label of the Product. Defendant also
 13 admits that a Snapple website page relating to the Product stated: “In our search for the perfect
 14 tea, we scoured the planet and found rooibos (“roy-boss”), a rare antioxidant rich tea** that only
 15 grows in the Western Cape region of South Africa.... We topped it off with real fruit juice and
 16 Vitamin C to help support a healthy immune system*. So go ahead, enjoy our delicious rooibos.
 17 And work on the pronunciation later.” Defendant further admits that such website page stated:
 18 “*It’s rich in antioxidant vitamin C which helps support a healthy immune system.” Defendant
 19 further admits that such website page stated: “**Contains about 36mg of polyphenols per 8 fl oz.”
 20 Defendant otherwise denies each and every allegation contained in paragraph 26.

21 27. In response to paragraph 27 of the First Amended Complaint, Defendant is
 22 presently without sufficient knowledge or information to form a belief as to the truth of the
 23 allegation concerning each consumer’s intent when he or she purchased the Product, and on that
 24 basis denies the allegation. Defendant otherwise denies each and every allegation contained in
 25 paragraph 27.

26 28. In response to paragraph 28 of the First Amended Complaint, Defendant
 27 denies each and every allegation contained therein.

1 29. In response to paragraph 29 of the First Amended Complaint, Defendant
2 admits that it does not cite any clinical trial or study it has conducted or commissioned on the
3 Product on the benefits of the Product. Defendant otherwise denies each and every allegation
4 contained in paragraph 29.

5 30. In response to paragraph 30 of the First Amended Complaint, Defendant
6 denies each and every allegation contained therein.

7 31. In response to paragraph 31 of the First Amended Complaint, Defendant
8 denies each and every allegation contained therein.

9 32. In response to paragraph 32 of the First Amended Complaint, Defendant
10 denies each and every allegation contained therein.

11 33. In response to paragraph 33 of the First Amended Complaint, Defendant
12 states that it is presently without sufficient knowledge or information to form a belief as to the
13 truth of the allegations therein, and on that basis, Defendant denies each and every allegation
14 contained in paragraph 33.

15 34. In response to paragraph 34 of the First Amended Complaint, Defendant
16 admits that it sold "thousands of units of the Product." Defendant otherwise denies each and every
17 allegation contained in paragraph 34.

18 35. In response to paragraph 35 of the First Amended Complaint, Defendant
19 denies each and every allegation contained therein.

20 36. In response to paragraph 36 of the First Amended Complaint, Defendant is
21 presently without sufficient knowledge or information to form a belief as to the truth of the
22 allegation concerning Plaintiff's intent when she allegedly purchased the Product, and on that
23 basis denies the allegation. Defendant otherwise denies each and every allegation contained in
24 paragraph 36.

25 37. In response to paragraph 37 of the First Amended Complaint, Defendant
26 denies each and every allegation contained therein.

27 38. In response to paragraph 38 of the First Amended Complaint, Defendant
28 denies each and every allegation contained therein.

1 39. In response to paragraph 39 of the First Amended Complaint, Defendant
2 denies each and every allegation contained therein.

3 40. In response to paragraph 40 of the First Amended Complaint, Defendant
4 denies each and every allegation contained therein.

5 41. In response to paragraph 41 of the First Amended Complaint, Defendant
6 denies each and every allegation contained therein.

7 42. In response to paragraph 42 of the First Amended Complaint, Defendant
8 states that the allegations set forth therein state legal conclusions to which no response is required.
9 Defendant otherwise denies each and every allegation contained in paragraph 42.

10 43. In response to paragraph 43 of the First Amended Complaint, Defendant
11 incorporates by this reference its responses to paragraphs 1 through 42 of the First Amended
12 Complaint.

13 44. In response to paragraph 44 of the First Amended Complaint, Defendant
14 states that the allegations set forth therein state legal conclusions to which no response is required.
15 Defendant otherwise denies each and every allegation contained in paragraph 44.

16 45. In response to paragraph 45 of the First Amended Complaint, Defendant
17 states that the allegations set forth therein state legal conclusions to which no response is required.
18 Defendant otherwise denies each and every allegation contained in paragraph 45.

19 46. In response to paragraph 46 of the First Amended Complaint, Defendant
20 states that the allegations set forth therein state legal conclusions to which no response is required.
21 Defendant otherwise denies each and every allegation contained in paragraph 46.

22 47. In response to paragraph 47 of the First Amended Complaint, Defendant
23 states that the allegations set forth therein state legal conclusions to which no response is required.
24 Defendant otherwise denies each and every allegation contained in paragraph 47.

25 48. In response to paragraph 48 of the First Amended Complaint, Defendant
26 states that the allegations set forth therein state legal conclusions to which no response is required.
27 Defendant otherwise denies each and every allegation contained in paragraph 48.

1 49. In response to paragraph 49 of the First Amended Complaint, Defendant
2 states that the allegations set forth therein state legal conclusions to which no response is required.
3 Defendant otherwise denies each and every allegation contained in paragraph 49.

4 50. In response to paragraph 50 of the First Amended Complaint, Defendant
5 denies each and every allegation contained therein.

6 51. In response to paragraph 51 of the First Amended Complaint, Defendant
7 states that it is presently without sufficient knowledge or information to form a belief as to the
8 truth of the allegations therein, and on that basis, Defendant denies each and every allegation
9 contained in paragraph 51.

10 52. In response to paragraph 52 of the First Amended Complaint, Defendant
11 states that the allegations set forth therein state legal conclusions to which no response is required.
12 Defendant otherwise denies each and every allegation contained in paragraph 52.

13 53. In response to paragraph 53 of the First Amended Complaint, Defendant
14 states that the allegations set forth therein state legal conclusions to which no response is required.
15 Defendant otherwise denies each and every allegation contained in paragraph 53.

16 54. In response to paragraph 54 of the First Amended Complaint, Defendant
17 states that the allegations set forth therein state legal conclusions to which no response is required.
18 Defendant otherwise denies each and every allegation contained in paragraph 54.

19 55. In response to paragraph 55 of the First Amended Complaint, Defendant
20 states that the allegations set forth therein state legal conclusions to which no response is required.
21 Defendant otherwise denies each and every allegation contained in paragraph 55.

22 56. In response to paragraph 56 of the First Amended Complaint, Defendant
23 states that the allegations set forth therein state legal conclusions to which no response is required.
24 Defendant otherwise denies each and every allegation contained in paragraph 56.

25 57. In response to paragraph 57 of the First Amended Complaint, Defendant
26 states that the allegations set forth therein state legal conclusions to which no response is required.
27 Defendant otherwise denies each and every allegation contained in paragraph 57.

1 58. In response to paragraph 58 of the First Amended Complaint, Defendant
2 states that the allegations set forth therein state legal conclusions to which no response is required.
3 Defendant otherwise denies each and every allegation contained in paragraph 58.

4 59. In response to paragraph 59 of the First Amended Complaint, Defendant
5 incorporates by this reference its responses to paragraphs 1 through 58 of the First Amended
6 Complaint.

7 60. In response to paragraph 60 of the First Amended Complaint, Defendant
8 states that the allegations set forth therein state legal conclusions to which no response is required.
9 Defendant otherwise denies each and every allegation contained in paragraph 60.

10 61. In response to paragraph 61 of the First Amended Complaint, Defendant
11 states that the allegations set forth therein state legal conclusions to which no response is required.
12 Defendant otherwise denies each and every allegation contained in paragraph 61.

13 62. In response to paragraph 62 of the First Amended Complaint, Defendant
14 states that the allegations set forth therein state legal conclusions to which no response is required.
15 Defendant otherwise denies each and every allegation contained in paragraph 62.

16 63. In response to paragraph 63 of the First Amended Complaint, Defendant
17 states that the allegations set forth therein state legal conclusions to which no response is required.
18 Defendant otherwise denies each and every allegation contained in paragraph 63.

19 64. In response to paragraph 64 of the First Amended Complaint, Defendant
20 states that the allegations set forth therein state legal conclusions to which no response is required.
21 Defendant otherwise denies each and every allegation contained in paragraph 64.

22 65. In response to paragraph 65 of the First Amended Complaint, Defendant
23 states that the allegations set forth therein state legal conclusions to which no response is required.
24 Defendant otherwise denies each and every allegation contained in paragraph 65.

25 66. In response to paragraph 66 of the First Amended Complaint, Defendant
26 states that the allegations set forth therein state legal conclusions to which no response is required.
27 Defendant otherwise denies each and every allegation contained in paragraph 66.

28 67. In response to paragraph 67 of the First Amended Complaint, Defendant

1 states that the allegations set forth therein state legal conclusions to which no response is required.
2 Defendant is also presently without sufficient knowledge or information to form a belief as to the
3 truth of the allegation that Plaintiff is a citizen of California who purchased and used the Product,
4 and on that basis denies the allegation. Defendant otherwise denies each and every allegation
5 contained in paragraph 67.

6 68. In response to paragraph 68 of the First Amended Complaint, Defendant
7 states that the allegations set forth therein state legal conclusions to which no response is required.
8 Defendant otherwise denies each and every allegation contained in paragraph 68.

9 69. In response to paragraph 69 of the First Amended Complaint, Defendant
10 states that the allegations set forth therein state legal conclusions to which no response is required.
11 Defendant otherwise denies each and every allegation contained in paragraph 69.

12 70. In response to paragraph 70 of the First Amended Complaint, Defendant
13 states that the allegations set forth therein state legal conclusions to which no response is required.
14 Defendant otherwise denies each and every allegation contained in paragraph 70.

15 71. In response to paragraph 71 of the First Amended Complaint, Defendant
16 states that the allegations set forth therein state legal conclusions to which no response is required.
17 Defendant otherwise denies each and every allegation contained in paragraph 71.

18 72. In response to paragraph 72 of the First Amended Complaint, Defendant
19 states that the allegations set forth therein state legal conclusions to which no response is required.
20 Defendant otherwise denies each and every allegation contained in paragraph 72.

21 73. In response to paragraph 73 of the First Amended Complaint, Defendant
22 states that the allegations set forth therein state legal conclusions to which no response is required.
23 Defendant otherwise denies each and every allegation contained in paragraph 73.

24 74. In response to paragraph 74 of the First Amended Complaint, Defendant
25 incorporates by this reference its responses to paragraphs 1 through 73 of the First Amended
26 Complaint.

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1 75. In response to paragraph 75 of the First Amended Complaint, Defendant
2 states that the allegations set forth therein state legal conclusions to which no response is required.
3 Defendant otherwise denies each and every allegation contained in paragraph 75.

4 76. In response to paragraph 76 of the First Amended Complaint, Defendant
5 denies each and every allegation contained therein.

6 77. In response to paragraph 77 of the First Amended Complaint, Defendant
7 states that the allegations set forth therein state legal conclusions to which no response is required.
8 Defendant otherwise denies each and every allegation contained in paragraph 77.

9 78. In response to paragraph 78 of the First Amended Complaint, Defendant
10 states that the allegations set forth therein state legal conclusions to which no response is required.
11 Defendant otherwise denies each and every allegation contained in paragraph 78.

12 79. In response to paragraph 79 of the First Amended Complaint, Defendant
13 states that the allegations set forth therein state legal conclusions to which no response is required.
14 Defendant otherwise denies each and every allegation contained in paragraph 79.

15 80. In response to paragraph 80 of the First Amended Complaint, Defendant
16 states that the allegations set forth therein state legal conclusions to which no response is required.
17 Defendant otherwise denies each and every allegation contained in paragraph 80.

18 81. In response to paragraph 81 of the First Amended Complaint, Defendant
19 states that the allegations set forth therein state legal conclusions to which no response is required.
20 Defendant otherwise denies each and every allegation contained in paragraph 81.

21 82. In response to paragraph 82 of the First Amended Complaint, Defendant
22 states that the allegations set forth therein state legal conclusions to which no response is required.
23 Defendant otherwise denies each and every allegation contained in paragraph 82.

24 83. In response to paragraph 83 of the First Amended Complaint, Defendant
25 states that the allegations set forth therein state legal conclusions to which no response is required.
26 Defendant otherwise denies each and every allegation contained in paragraph 83.

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1 84. In response to paragraph 84 of the First Amended Complaint, Defendant
 2 incorporates by this reference its responses to paragraphs 1 through 83 of the First Amended
 3 Complaint.

4 85. In response to paragraph 85 of the First Amended Complaint, Defendant
 5 states that the allegations set forth therein state legal conclusions to which no response is required.
 6 Defendant otherwise denies each and every allegation contained in paragraph 85.

7 86. In response to paragraph 86 of the First Amended Complaint, Defendant
 8 states that the allegations set forth therein state legal conclusions to which no response is required.
 9 Defendant otherwise denies each and every allegation contained in paragraph 86.

10 87. In response to paragraph 87 of the First Amended Complaint, Defendant
 11 states that the allegations set forth therein state legal conclusions to which no response is required.
 12 Defendant otherwise denies each and every allegation contained in paragraph 87.

13 88. In response to paragraph 88 of the First Amended Complaint, Defendant
 14 states that the allegations set forth therein state legal conclusions to which no response is required.
 15 Defendant otherwise denies each and every allegation contained in paragraph 88.

16 89. In response to paragraph 89 of the First Amended Complaint, Defendant
 17 states that the allegations set forth therein state legal conclusions to which no response is required.
 18 Defendant otherwise denies each and every allegation contained in paragraph 89.

19 90. In response to paragraph 90 of the First Amended Complaint, Defendant
 20 states that to the extent that the First Amended Complaint fails to allege a date of the purported
 21 letter, it lacks specificity, and on that basis, Defendant denies the allegation. Defendant further
 22 denies that the alleged letter satisfies the legal requirements of California's Consumers Legal
 23 Remedies Act. Defendant further states that the allegations set forth therein state legal
 24 conclusions to which no response is required. Defendant otherwise denies each and every
 25 allegation contained in paragraph 90.

26 91. In response to paragraph 91 of the First Amended Complaint, Defendant
 27 states that the allegations set forth therein state legal conclusions to which no response is required.
 28 Defendant otherwise denies each and every allegation contained in paragraph 91.

1 92. In response to paragraph 92 of the First Amended Complaint, Defendant
 2 states that the allegations set forth therein state legal conclusions to which no response is required.
 3 Defendant otherwise denies each and every allegation contained in paragraph 92.

4 93. In response to paragraph 93 of the First Amended Complaint, Defendant
 5 incorporates by this reference its responses to paragraphs 1 through 92 of the First Amended
 6 Complaint.

7 94. In response to paragraph 94 of the First Amended Complaint, Defendant
 8 states that the allegations set forth therein state legal conclusions to which no response is required.
 9 Defendant otherwise denies each and every allegation contained in paragraph 94.

10 95. In response to paragraph 95 of the First Amended Complaint, Defendant
 11 states that the allegations set forth therein state legal conclusions to which no response is required.
 12 Defendant otherwise denies each and every allegation contained in paragraph 95.

13 96. In response to paragraph 96 of the First Amended Complaint, Defendant
 14 states that the allegations set forth therein state legal conclusions to which no response is required.
 15 Defendant otherwise denies each and every allegation contained in paragraph 96.

16 97. In response to paragraph 97 of the First Amended Complaint, Defendant
 17 states that the allegations set forth therein state legal conclusions to which no response is required.
 18 Defendant otherwise denies each and every allegation contained in paragraph 97.

19 98. In response to paragraph 98 of the First Amended Complaint, Defendant
 20 states that the allegations set forth therein state legal conclusions to which no response is required.
 21 Defendant otherwise denies each and every allegation contained in paragraph 98.

22 99. In response to paragraph 99 of the First Amended Complaint, Defendant
 23 states that the allegations set forth therein state legal conclusions to which no response is required.
 24 Defendant otherwise denies each and every allegation contained in paragraph 99.

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AFFIRMATIVE DEFENSES

For its affirmative defenses, and without assuming any greater burden of proof than as required by law, Defendant alleges as follows:

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

Each of the purported claims set forth in the First Amended Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

(Waiver, Estoppel and Unclean Hands)

0 Each of the purported claims set forth in the First Amended Complaint is barred by
1 the doctrines of waiver, estoppel and/or unclean hands.

THIRD AFFIRMATIVE DEFENSE

(Failure to Mitigate)

14 With respect to each of the purported claims set forth in the First Amended
15 Complaint, Plaintiff and each member of the putative class has failed to mitigate his or her alleged
16 damages.

FOURTH AFFIRMATIVE DEFENSE

(Compliance with California Law)

19 This action is barred in whole or in part because Defendant has complied with and
20 continues to comply with California law. This action is further barred in whole or in part because
21 the business practices described in the First Amended Complaint were not and are not unfair,
22 unlawful, or fraudulent within the meaning of California Business and Professions Code § 17200
23 et seq.

FIFTH AFFIRMATIVE DEFENSE

(Ongoing Conduct)

26 This action is barred in whole or in part because Plaintiff does not sufficiently
27 allege continuing misconduct by Defendant for purposes of relief under California Business and
28 Professions Code §§ 17200 et seq.

SIXTH AFFIRMATIVE DEFENSE

(Good Faith, Privilege and Justification)

Any and all of the acts or omissions alleged to have been performed by Defendant, if performed at all, were done in good faith and/or were privileged or justified.

SEVENTH AFFIRMATIVE DEFENSE

(No actual harm or injury)

This action is barred in whole or in part because neither Plaintiff nor any other member of the putative class has suffered actual harm, injury in fact, or lost money or property as a result of a violation of California Business and Professions Code § 17200 et seq., or under any other cause of action in this case.

EIGHTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

3 The purported claims set forth in the First Amended Complaint are barred by the
4 applicable statute of limitations.

NINTH AFFIRMATIVE DEFENSE

(Voluntary Payment)

The purported claims set forth in the First Amended Complaint are barred by in whole or part by the doctrine of voluntary payment.

TENTH AFFIRMATIVE DEFENSE

(Preemption and/or Primary Jurisdiction)

All or some of the purported claims set forth in the First Amended Complaint are barred by the doctrine of preemption and/or primary jurisdiction.

ELEVENTH AFFIRMATIVE DEFENSE

(No Class Action)

All or some of the purported claims set forth in the First Amended Complaint are not amenable to class action treatment.

TWELFTH AFFIRMATIVE DEFENSE

(Offset and/or Setoff)

To the extent Plaintiff is entitled to relief, Defendant is entitled to an offset or setoff of such relief for the value of the benefits that Plaintiff received from Defendant.

RESERVATION OF RIGHTS

In addition, Defendant has not completed its investigation and discovery regarding the First Amended Complaint and the claims asserted by Plaintiff therein. Accordingly, Defendant reserves the right to assert such additional affirmative defenses as necessary based on such ongoing investigation and discovery.

Prayer

WHEREFORE, Defendant prays for judgment as follows:

1. That Plaintiff takes nothing from Defendant by reason of her First Amended Complaint;

2. That the First Amended Complaint against Defendant be dismissed with prejudice;

3. That Defendant be awarded its costs and attorney's fees incurred to defend this suit; and

4. That Defendant be awarded any other and further relief as the Court may deem just and proper.

DATED: May 10, 2011

CRONE HAWXHURST LLP

By /s/ Daryl M. Crone
Gerald E. Hawxhurst
Daryl M. Crone
Attorneys for Defendant
Snapple Beverage Corp.

DEMAND FOR JURY TRIAL

Defendant Snapple Beverage Corp. hereby demands trial by jury pursuant to Fed. R. Civ. Proc. § 38(b).

DATED: May 10, 2011

CRONE HAWXHURST LLP

By /s/ Daryl M. Crone
Gerald E. Hawxhurst
Daryl M. Crone
Attorneys for Defendant
Snapple Beverage Corp.